

RESOLUTION NO. 74826**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ, FORMING CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1 AND PROVIDING FOR THE LEVY OF A SPECIAL TAX THEREIN TO FINANCE SPECIFIED ACQUISITION, CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, REHABILITATION AND UPGRADE OF THE SAN JOSÉ CONVENTION CENTER.**

WHEREAS, the City of San José (the “City”) is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and to enforce all laws and regulations with respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of the City; and

WHEREAS, the City Council of the City (the “City Council”) duly adopted its Resolution No. 74783 (the “Resolution of Intention”) on February 3, 2009 wherein the City Council declared its intention to and proposed to establish a convention center facilities district within the territory of the City under the authority of Chapter 14.32 (the “Chapter”) of the San José Municipal Code and, as provided therein, under the provisions of the Mello-Roos Community Facilities Act of 1982 (Sections 53311 and following of the California Government Code) as they existed at the time of the adoption of the Chapter (the “Act”), and as modified by the Chapter, to be designated and known as “Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California” (the “Convention Center Facilities District”), to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center; and

WHEREAS, the City Council, by its Resolution No. 74604, adopted September 30, 2008, approved, among other things, a boundary map for the Convention Center Facilities District (the “Boundary Map”); and

WHEREAS, pursuant to Resolution 74604, the Boundary Map was recorded on November 4, 2008 in the Book of Maps of Assessment and Community Facilities Districts maintained by the County Recorder of the County of Santa Clara in Book 44 at Pages 32-46, as Instrument Number 20037072; and

WHEREAS, the City Council, by its Resolution No. 74758, adopted January 13, 2009, repealed Resolution 74604, but re-approved the Boundary Map, ratified its approval in Resolution 74604, and ratified the recordation of the Boundary Map; and

WHEREAS, a reduced copy of the Boundary Map was attached to the Resolution of Intention as Exhibit A thereto and is incorporated herein by this reference; and

WHEREAS, the Resolution of Intention fixed a time and place for a public protest hearing (the "Public Hearing") to be held by the City Council to consider the establishment of the Convention Center Facilities District; the authorization of a special tax to be levied and collected within the Convention Center Facilities District (the "Special Tax"); the proposed rate, method of apportionment and manner of collection of the Special Tax; the facilities proposed to be authorized to be paid for with the proceeds of the Special Tax collections; the establishment of an appropriations limit for the Convention Center Facilities District; and all other matters set forth in the Resolution of Intention; and

WHEREAS, the City Manager has submitted a report (the "Hearing Report") to the City Council containing a brief description of the facilities by type that in her opinion will be required to adequately meet the needs of the City with respect to the Convention Center, together with estimates of the cost of financing the acquisition and construction of the facilities, and an estimate of the incidental expenses related thereto, and certain other matters, in accordance with the Resolution of Intention; and

WHEREAS, the City Council has received the Hearing Report, and it is made a part of the record of the Public Hearing; and

WHEREAS, pursuant to the Resolution of Intention, the Public Hearing was set by the City Council for Tuesday, the 10th day of March, 2009, at the hour of 1:30 P.M., in the City Council Chambers at San José City Hall, 200 East Santa Clara Street, City Council Wing, 2nd Floor, San José, California 95113; and

WHEREAS, at the time and place set for the Public Hearing on March 10, 2009, the City Council opened the Public Hearing to consider the establishment of the Convention Center Facilities District; the proposed rate, method of apportionment and manner of collection of the Special Tax; the facilities proposed to be financed; the establishment of the appropriations limit; and all other matters set forth in the Resolution of Intention; and

WHEREAS, all persons interested, including all taxpayers, property owners and registered voters within the Convention Center Facilities District, were given an opportunity to appear and to be heard, and the testimony of all interested persons and all taxpayers, property owners and registered voters for or against the establishment of the Convention Center Facilities District and the levy of the Special Tax, or the extent of the Convention Center Facilities District, or the financing of any of the proposed facilities, or the establishment of the appropriations limit, or any other matters set forth in the Resolution of Intention, was heard and considered; and

WHEREAS, all registered voters residing within the boundaries of the proposed Convention Center Facilities District, if any, and all owners of land within the

boundaries of the proposed Convention Center Facilities District (and the operators of hotels that are located on land leased from public agencies) that would not be exempt from the proposed levy of Special Tax, were allowed to submit written protests to any aspect of the proposals contained in the Resolution of Intention, and permitted to withdraw their protests prior to the close of the Public Hearing; and

WHEREAS, there are on file with the City Clerk a proof of publication of the Notice of Public Hearing in the *SAN JOSÉ MERCURY NEWS*, and a Certificate of Mailing of Notice of Public Hearing showing mailed notice to each owner of land within the Convention Center Facilities District except in cases where the land is owned by a public agency in which case the mailing was to the lessee of the public agency; and

WHEREAS, the City Council is fully advised in this matter;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ THAT:

1. The City Council hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the City and that the statements, findings and determinations of the City set forth above are true and correct and that the consideration of the formation of the Convention Center Facilities District is important to the public welfare of the residents of the City, and may result in significant public benefits.

2. Except to the extent inconsistent with this Resolution, the Resolution of Intention is reaffirmed, and its provisions and findings are, to that same extent, incorporated herein by this reference.

3. The City Council accepts the proof of publication of the Notice of Public Hearing, the Certificate of Mailing the Notice of Public Hearing, and finds, based thereon, that proper notice of the Public Hearing has been given in accordance with the Chapter, the California Government Code, and the State and Federal Constitutions, and that the Public Hearing was conducted with proper and legal notice in all respects.

4. The City Council finds and determines that at the close of the Public Hearing, written protests, if any, to the establishment of the Convention Center Facilities District, or to the levy of the Special Tax, or to the extent of the Convention Center Facilities District, or to the acquisition and construction of any of the facilities described in the Resolution of Intention, or to the establishment of the appropriations limit for the Convention Center Facilities District, or to any other matters contained in the Resolution of Intention, were submitted by less than 50 percent of the registered voters residing within the Convention Center Facilities District. Similarly, the City Council finds that at the close of the Public Hearing, such written protests, if any, were submitted by the owners of less than one-half of the Hotel rooms (Section 14.32.420, San José Municipal Code) in the territory proposed to be included in the Convention Center Facilities District and not exempt from the Special Tax. Thus, the City Council finds that it is not precluded, by the Chapter, from proceeding further in this matter. The City

Council hereby further orders and determines that all protests to the establishment of the Convention Center Facilities District, or the levy of the Special Tax proposed to be levied therein, or the extent of the Convention Center Facilities District, or the acquisition and construction of any of the described facilities, or the establishment of the appropriations limit for the Convention Center Facilities District, that may have been submitted, have been considered and are hereby overruled.

5. The facilities authorized to be financed by and through the Convention Center Facilities District are those shown on Exhibit B to the Resolution of Intention, which by this reference is incorporated herein and made a part of this Resolution. The City Council finds that the authorized facilities do not in any way exceed the description of the authorized facilities proposed in the Resolution of Intention. All of the facilities have an estimated useful life of five (5) years or longer, and are facilities that the City or other public agencies are authorized by law to construct, own or operate or to which they may contribute revenue. This authorization to finance the acquisition and construction of facilities includes incidental expenses for the facilities comprising the costs of planning and designing the facilities, together with the costs of environmental evaluations thereof, and all costs associated with the creation of the Convention Center Facilities District, the issuance of debt (as defined in the Act, "Debt"), the determination of the amount of any Special Taxes or the collection of any Special Taxes and costs otherwise incurred in order to carry out the authorized purposes of the Convention Center Facilities District, together with any other expenses incidental to the acquisition and construction of the facilities. A representative list of incidental expenses proposed to be incurred is set forth in Exhibit C to the Resolution of Intention, which by this reference is incorporated herein and made a part of this Resolution.

6. The rate and method of apportionment of the Special Tax (the "RMA"), including the maximum annual Special Tax, for the Convention Center Facilities District is set forth in Exhibit D to the Resolution of Intention, which by this reference is incorporated herein and made a part of this Resolution. The RMA provides sufficient detail to allow each landowner within the Convention Center Facilities District to estimate the maximum amount that such person will have to pay. The Special Tax obligation may not be prepaid. The City Council hereby determines and orders that the Special Tax will not be apportioned in any tax year on any portion of property in residential use in that tax year, with the understanding that transient occupancy of hotel rooms is not residential use.

7. If the election referred to below results in the approval of the ballot measure described herein, then upon recordation of a Notice of Special Tax Lien pursuant to Section 3114.5 of the Streets and Highways Code of the State of California, a continuing lien to secure each levy of the Special Tax shall attach to all nonexempt real property in the Convention Center Facilities District, which lien shall continue in force and effect until four years after the levy of the Special Tax by the City Council ceases and a Notice of Cessation of Special Tax is recorded in accordance with Section 53330.5 of the Act, should that ever occur.

8. Except where funds are otherwise available, the Special Tax, subject to the limits described in the RMA, but otherwise in an amount sufficient to pay for the acquisition and construction of the facilities, the making of lease payments for facilities (whether in conjunction with the issuance of certificates of participation or not); including the payment of interest on and principal of Debt to be issued to finance the acquisition and construction of the facilities, and including the repayment of funds advanced by the City for the Convention Center Facilities District and including the repayment under any agreement (which shall not constitute a debt or liability of the City) for advances of funds or for the reimbursement for the lesser of the value or cost of work in-kind provided by any person or entity for the Convention Center Facilities District, and to pay for the authorized administrative costs of the Convention Center Facilities District, will be levied on a continuing basis within the boundaries of the Convention Center Facilities District.

9. The Special Tax will be collected monthly through the same mechanism by which the City currently collects its Transit Occupancy Tax from hotel properties; however, the City Council reserves the right to utilize any other lawful means of billing, collecting, and enforcing the special tax, including billing on the secured property tax roll, supplemental billing, and, when lawfully available, judicial foreclosure of the special tax lien.

10. Pursuant to Section 53340.1 of the Act, but subject to the limits described in the RMA, the Special Tax shall be levied on privately held leasehold or possessory interests in property owned by a public agency (which property is otherwise exempt from the Special Tax), to be payable by the owner of the leasehold or possessory interests in such property.

11. Pursuant to Section 53325.7 of the Act, and subject to the voter approval requirement contained in that Section, the fiscal year 2008-2009 appropriations limit, as defined by subdivision (h) of Section 8 of Article XIIB of the California Constitution, for the Convention Center Facilities District, and subject to adjustment as provided therein, is established in the amount of \$50,000,000.

12. The City Council will submit the authorizations of this Resolution to the qualified electors of the Convention Center Facilities District in a special mailed-ballot election pursuant to Section 53326(c) of the Act. Based upon the determination and order made in Section 6 of this resolution, the qualified electors of the Convention Center Facilities District are the landowners owning property that will not be exempt from the Special Tax within the Convention Center Facilities District, except in cases where the Landowner is a public agency in which cases the qualified electors are the lessees of the public agencies in accordance with Section 14.32.230 of the Chapter.

13. The collection of the Special Tax will be administered by the Director of Finance of the City, telephone (408) 535-7000, who will also be responsible for estimating future Special Tax levies pursuant to Section 53340.2 of the Act.

14. The City Council again identifies all property that may be developed for hotel purposes (as defined in the City's Municipal Code) anywhere within the City –

or within the City's sphere of influence, as determined by the Local Agency Formation Commission (LAFCO) of the County of Santa Clara, and which becomes annexed to the City – as "territory proposed for annexation in the future" as that phrase is used in Section 53339.3(b) of the Act.

15. The City Council finds and determines that all proceedings conducted and approved by the City Council with respect to the establishment of the Convention Center Facilities District, up to and including the adoption of this Resolution and the other Resolutions adopted this date in connection with the Convention Center Facilities District, are valid and in conformity with the requirements of the Chapter, and this determination is final and conclusive for all purposes and is binding upon all persons. Accordingly, the City Council finds, determines and orders that the Convention Center Facilities District is hereby established with all of the authorities described and set forth in this Resolution, the exercise of which is subject only to the approval of the qualified electors of the Convention Center Facilities District.

16. This Resolution shall take effect upon its adoption.

ADOPTED this 10th day of March, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDI, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CHIRCO.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk